

## Dairy Nutrient Management Task Force

August 22, 2000

### Minutes

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***Minutes amended and approved at the September 20, 2000 meeting of the Dairy Nutrient Management Task Force held in Olympia, Washington.***

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[ NOTE: Future action items are underlined in the minutes. ]

The Dairy Nutrient Management Task Force ("Task Force") met in the Yakima County Courthouse, Room 420, on August 22, 2000.

Senator Bob Morton called the meeting to order at 1:47 p.m. and invited all attendees to introduce themselves. Conservation Commission staff providing support at this meeting were Tom Salzer and Vicki Flynn.

Task Force voting members and voting alternates attending were:

- Dick Bengen (dairy industry representative – alternate)
- Representative Bruce Chandler (Legislature)
- Fred Colvin (conservation districts – alternate)
- Alvin Driesen (dairy industry representative)
- Phil KauzLoric (Ecology – alternate)
- Steve Meyer (Conservation Commission)
- Senator Bob Morton (Legislature)
- Senator Marilyn Rasmussen (Legislature)
- Ron Shavlik (USDA Natural Resources Conservation Service)
- Roger Short (dairy industry representative)
- Tony Veiga (dairy industry representative)

Other attendees were:

- Debbie Becker (Wash. State Dairy Federation)
  - Laurie Crowe (South Yakima Conservation District staff)
  - Dan DeGroot (dairy industry representative)
  - Frank Easter (USDA Natural Resources Conservation Service)
  - Vicki Flynn (Conservation Commission staff)
  - Dave Johnson (Legislative staff)
  - Larry Johnson (USDA Natural Resources Conservation Service)
  - Ken Koch (Ecology staff)
  - Bob Lee (Legislative staff)
  - Geoff Reed (King Conservation District staff)
  - Carol Richmond (Legislative staff)
  - Tom Salzer (Conservation Commission staff)
  - Bob Stevens (WSU/CES)
  - Steve VanBatavia (dairy industry representative)
  - Scott Wallace (King Conservation District board member)
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### **Minutes**

Senator Rasmussen moved to approve the minutes of the July 11, 2000 meeting. Following a second by Meyer, the motion carried without dissent.

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### **Action items – old**

Progress on eight action items from the July 11 meeting was reported:

1. **Public health department representative** – Additional contact with WSALPHO had occurred but no representative to the Task Force has been designated by them. Staff was directed to follow up.
2. **Commercial shellfish growers representative** – No contact with a statewide association of oyster growers has been made. Staff was directed to initiate contact.
3. **WSU/CES representative** – Staff delayed asking WSU/CES for a representative until a hiring decision was made for their dairy specialist position. It was reported that an offer had been made to fill this position, but the candidate could not start until after January 1, 2001. Staff was directed to contact Dean Mike Tate to ask for a temporary representative until a more permanent representative could be appointed.
4. **Publication of meeting schedule and Open Public Meetings** – A schedule of meetings has been published in the Washington State Register. Lee reported he had worked with staff to determine this was the appropriate place to publish the meeting schedule. Copy of notice in meeting packet.
5. **Organize August 22 meeting** – done.
6. **Ecology to report on litigation costs** – KauzLoric reported at this meeting.
7. **Ecology to report on qualifications and training of dairy inspectors** – KauzLoric report at this meeting.
8. **Send Attorney General Opinion to participants** – completed, copy in meeting packet.

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### **Litigation costs**

KauzLoric distributed a handout titled "Typical Dairy Penalty Collection Costs." The average cost to litigate a penalty in front of the Pollution Control Hearings Board has been \$2,156.

Becker asked for a total dollar amount of penalties not yet litigated; Koch stated the total was \$184,000. Senator Morton asked for clarification; Koch responded this figure represented penalties before the PCHB and those on which the PCHB had not rendered a decision.

KauzLoric noted that about 65 percent of water quality penalties sent to collection were actually remitted. If two collection agencies fail to collect the penalty, the matter is sent to the Attorney General for possible action. Senator Rasmussen asked what happens if the cost of litigation/collection exceeds the amount of the penalty. KauzLoric responded that the purpose of penalties is to modify behavior, not to make a profit. He added that these matters were sometimes settled, with the individual or company implementing an environmental restoration

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project instead of paying the entire penalty amount. Negotiations usually happen just before a PCHB hearing, or come as a result of the hearing.

Senator Morton asked Ecology to report at every meeting on the status of penalties and collections.

Senator Rasmussen asked if infractions occur more in one geographic area than in others. KauzLoric noted most occur in western Washington. In response to her request for a breakdown of penalties and actions by region, KauzLoric said he would provide this information to the Task Force. Becker noted the quarterly report already produced by Ecology would probably meet this request.

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***Dairy inspector qualifications and training***

KauzLoric distributed a handout titled "Ecology Dairy Inspector Duties and Qualifications," noting that the Washington State Department of Personnel sets the minimum qualifications for the position. Ecology staff felt additional information would help job seekers and Ecology in obtaining qualified, interested candidates, so they added additional evaluation criteria to the qualifications.

Senator Morton asked for an example of a dairy inspection report. KauzLoric said he could get examples of dairy inspection reports for the Task Force. He added that typically, additional detail (including photographs) is documented by the inspector when an action may be taken.

VanBatavia asked whether Ecology rotated inspectors to other areas. Ecology trains inspectors alongside other inspectors from around the state, said KauzLoric. VanBatavia asked specifically about dairy inspector DouGlas Palenshus being moved from Yakima to the Northwest Regional Office. KauzLoric said Palenshus moved for personal reasons and filled an available opening in NWRO. VanBatavia asked if moving inspectors from region to region was a policy of Ecology's. KauzLoric said no, we try to avoid that.

Senator Morton asked how many inspectors were employed by Ecology. KauzLoric responded there were six in western Washington and 1.5 based in Yakima. Bengen asked if inspectors were situated based on the number of dairies or the number of cows, and KauzLoric said they tried to balance workload by the number of dairies.

Veiga asked if there was any particular individual with whom all inspectors trained. KauzLoric said all inspectors interact with him, and training occurs alongside experienced inspectors and supervisors.

Senator Rasmussen asked if Ecology looked at candidates with other backgrounds such as agronomy. KauzLoric noted that when he last looked at this issue, there did not appear to be a job class that fit well with different backgrounds.

Colvin asked if enforcement and technical assistance should be mixed. Senator Morton noted that a broader background would help level the playing field.

Bengen asked how many of the 7.5 inspectors had previous experience with dairies. KauzLoric thought about 3.5 and noted extensive on-the-job training occurs. KauzLoric distributed another handout titled "Ecology Dairy Inspector Training" to provide an overview of how dairy inspectors are trained.

Reed asked who would be the new supervisor at the Northwest Regional Office. KauzLoric responded that Debra Cornett was leaving Ecology for a job with the Washington Department of Fish and Wildlife, and no replacement had been selected.

Senator Rasmussen asked how much knowledge of EPA rules is needed to be an inspector. KauzLoric noted that he and the inspectors frequently discussed specific questions such as what is a CAFO (confined animal feeding operation).

Senator Rasmussen asked for a comparison of our program with those of Idaho and Oregon. KauzLoric said Idaho's program is about four years old. In Idaho, milk inspectors also perform water quality inspections, and failure on the water quality side means loss of the producer's milk license. EPA seems to like this approach because milk inspectors are relatively frequent visitors to the dairy. In contrast, Oregon appears to be where we were six or seven years ago. There are problems in Oregon and EPA seems less happy with that situation. Becker noted that EPA is still not willing to say Idaho's program is a success. She added that EPA wants to see programs and requirements more consistent from state to state.

Short asked about performance reviews for dairy inspectors, suggesting Ecology have producers participate in evaluations. KauzLoric offered to talk with him about this. Reed suggested peer review involving conservation district staff. DeGroot said it would be a good idea to periodically retrain and re-evaluate inspectors.

DeGroot noted we need some kind of process to complain to Ecology about a particular inspector. KauzLoric noted that during the Advisory and Oversight Committee era a few years ago, Ecology offered that producers could contact Dick Wallace or KauzLoric directly, or write a letter to the inspector's supervisor.

Shavlik described how, in southwest Washington, team meetings involving NRCS, conservation district and Ecology staff have opened a more productive dialog between inspectors and planners. He suggested this should be done in all regions.

Veiga asked how Ecology evaluated communication skills if the evaluator was not present during inspections to observe the inspector. Representative Chandler asked how long it took to adequately train an inspector. KauzLoric said training is on-going, but the initial training period lasts about three months.

Senator Morton suggested that on the handout titled "Ecology Dairy Inspector Duties and Qualifications," the words "pollution control" be replaced by "quality" so the sentence would read: "Independently conduct water ~~pollution control~~ quality inspections of dairy farms."

***Potential to pollute***

Senator Morton introduced this topic and related some history on the use of the term “potential to pollute.” KauzLoric distributed a handout titled “Water Quality Program Guidance.” RCW 90.48 directs Ecology to take action on “substantial potential to pollute.”

Ecology has issued Notices of Correction (NOCs) based on the potential to pollute. KauzLoric provided some examples to the Task Force. Instead of more formal action, Ecology primarily issues NOCs for potential to pollute. They have issued about 150 NOCs to this point.

Colvin asked how potential is characterized when seasonal variations occur, e.g., a lagoon full in December might present imminent potential to pollute whereas a lagoon full in August may not. Senator Rasmussen noted that year-round application of dairy wastes is a Best Management Practice in some cases and recommended a definition be developed.

Meyer noted pollution issues relate not just to surface waters but also to ground water. A problem with winter application is plants aren’t actively growing so nutrient use is negligible. The Conservation Commission has talked about the need for some minimum storage period. Short noted that in some regions, grass is actively growing in January. Senator Morton said the USDA Forest Service in northeast Washington requires grass seeding in the winter because growth starts in the winter.

Meyer asked can a producer assure protection of water without some manure storage. Colvin agreed that the number of dairies with no storage who can agronomically apply nutrients is probably small. Meyer added that risk assessment was a factor. Just because the system works when nothing goes wrong does not mean there is no risk. The Legislature could help with a discussion of risk. Colvin stated this issue should not be left up to the 7.5 inspectors.

VanBatavia noted that the economics of today’s dairy often required double cropping. To do this, producers need to apply during non-growing periods. The window of time when they can do this is very small.

Becker said the driver of this discussion was timelines for compliance as contained in RCW 90.64. The industry agreed to these deadlines, but then NOCs and Notices of Violation (NOVs) started appearing with references to RCW 90.48. These NOCs included accelerated timelines and references to AKART<sup>1</sup> (all known, available and reasonable methods of prevention, control, and treatment). The industry is still committed to the deadlines in RCW 90.64, but now producers are being asked to comply even sooner.

Veiga stated we need more information on potential to pollute. The term is too broad. This issue comes up at every meeting. Bengen noted that if we narrow it down too far, it puts producers and inspectors in a small box.

VanBatavia asked if it was correct there were no fines based on potential. KauzLoric said this was correct. Becker said Ecology can issue penalties based on violation of the NOC. KauzLoric said the particular situation Becker was referring to probably should not have occurred.

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<sup>1</sup> Staff note: AKART is defined in WAC 173-201A-020.

Senator Rasmussen suggested this discussion of potential to pollute should be continued at the next meeting.

Senator Morton asked KauzLoric if Ecology could come back to the Task Force with examples of the three categories on the handout (minimal potential to pollute, moderate potential and imminent potential). KauzLoric agreed.

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### ***King Conservation District issues***

Scott Wallace (Vice Chair, King Conservation District) was welcomed by Senator Rasmussen. Wallace began by describing a positive meeting held last week with KauzLoric and Debra Cornett to discuss the content of King CD's letter to the Task Force. Wallace then introduced Geoff Reed, District Manager for the King CD.

Reed said the issue revolves around timelines for installing lagoons. Eight lagoons are scheduled to be installed this summer. Some may not be built for various reasons. For example, the construction season on some sites may only be 60 days, a very small time window to get this kind of work done. The district asked that timelines for compliance in RCW 90.64 be followed.

Senator Morton asked about the 60-day construction window. Reed confirmed this was the case, particularly in wet sites. Wallace added that getting a permit to clean a ditch can take one to three years in King County. Senator Morton inquired if these are county permits, and Wallace confirmed they were. Senator Rasmussen added that Pierce and Snohomish counties are also slow when it comes to permits. Colvin noted this was true for Thurston County, too.

Wallace said the \$10,000 fine stated in the NOCs for not completing work within 90 days was simply not reasonable. Reed noted that disputes with neighbors also cause timing and permitting problems in King County.

KauzLoric said the meeting last week with King CD was good. Ecology has agreed to extend the timelines to the next construction season. He noted that more outreach to local governments is needed.

Becker inquired of KauzLoric whether the extension of timelines to the next construction season would apply to other NOCs as well. KauzLoric said he was not aware of other situations like this. Becker stated similar issues are surfacing in Snohomish, Skagit, and Pierce counties. According to KauzLoric, the issue appeared to be limited to the area served by Ecology's Northwest Regional Office. The timelines in the NOCs normally should not have been so tight but Ecology had some assurances this was doable in the King County situations. Ecology has used six and 18-month timelines in the past. Becker noted it got everyone's attention when the six-month timeline came out in NOCs.

KauzLoric said the legislative intent of RCW 90.64 was not to let problems go by without correcting them. This is why there is a dairy inspection program.

Wallace also said the publication titled "How to Survive a Dairy Inspection" sent the wrong message to dairy producers. He thanked the Task Force for hearing the district's concerns.

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Senator Rasmussen asked KauzLoric the amount of the penalty for the City of Seattle's sewage spill. KauzLoric said there was no penalty because the City did five things:

1. They notified Ecology immediately of the spill.
2. They implemented immediate corrective action.
3. They performed water quality monitoring.
4. They notified the local health department and posted the beach.
5. They already pay \$650,000 in annual permit fees.

He added that most dairy penalties have been assessed against repeat offenders.

Senator Morton offered the following discussion point: "Western Washington, to me, is a wetland. Maybe we shouldn't have any dairies in western Washington. What about some kind of incentive to move dairies to a more adaptable region of our state?"

Wallace said the marketplace is taking care of a general shift eastward. What is happening with neighbors and newspapers is a kind of in-grained harassment of dairy producers. Bengen said a lot of people would like to move their farms but they can't get well permits from Ecology. "If they make the choice to move out of western Washington, the vehicle must be water."

VanBatavia noted there are some advantages to farming in western Washington. Cows like it. Hauling cost to market is lower. The disadvantage is people view dairies as nuisances. Dreisen said western Washington dairies with 300 animals can't afford to move.

Meyer noted that "dairy farms are better for salmon than housing developments and strip malls."

Senator Rasmussen observed that Wilcox Farms wants to compost their wastes but neighbors object.

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***Natural Resources Conservation Service***

Because of concerns about changing standards, the USDA Natural Resources Conservation Service was invited to discuss their nutrient management policies and standards with the Task Force. Ron Shavlik introduced Frank Easter (Watershed Planning Leader, NRCS), Larry Johnson (State Engineer, NRCS) and Bob Stevens (with Cooperative Extension Service in Prosser).

**Practice Standards**

Easter began by describing the Field Office Technical Guide as a living document. NRCS updates standards to reflect new technology and to conform with changes made at the national level. Washington State is ahead of most other states when it comes to nutrient management. There is a new nutrient management practice standard that will change how we plan for dairies.

The new policy requires certification for those who review and approve plans. However, a person does not need to be certified to write plans.

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The application schedule in the plan is keyed to the condition/capacity of the land. Every dairy nutrient management plan involving land application of dairy wastes should have an application schedule in it.

Easter reported that NRCS is anticipating about 60 changes in existing practices or addition of new practices from their national office. The NRCS State Office looks at each to see if it will be usable/applicable in Washington State. These national standards can be customized to our state, but cannot be made less rigorous. We are going through two changes now for the nutrient management standard.

Senator Rasmussen asked how farmers can be expected to comply with a moving target. Easter noted that NRCS had changed the waste storage pond standard three times in the last ten years.

In response to a question about the workload involved in changing existing plans, Easter suggested we do not change existing plans when standards change. He also suggested talking about setting a date that grandfathers existing plans, and after that date new DNMPs must meet the new standards.

The new nutrient management standard must be adopted by Washington State NRCS by May 1, 2001 to comply with the deadline set by their national office.

Phosphorus Index

Bob Stevens spoke briefly about phosphorus issues. Usually, DNMPs are balanced for nitrogen (N). The movement of N mirrors the movement of fecal coliforms. On some farms, N may not be the limiting nutrient. It used to be taught that phosphorus (P) moved by becoming attached to small soil particles, and physical movement of the particles transported P. Research is now showing greater potential than we previously believed for movement of P in solution.

We used to use an application rate of 300 pounds per acre of N based on research done in Puyallup. Now, maximum rates of N application are determined locally using Cooperative Extension Service information and guidance from fertilizer companies. Older fertilizer guides may be out of date.

Stevens provided phosphorus index handouts to the Task Force for eastern and western Washington, and an Agricultural Research Service bulletin (number ARS-149). Essentially, the phosphorus index (PI) tells a producer to manage nutrients for N if there is low or medium risk of phosphorus moving off-site or out of the root zone. If there is a high risk of P movement, various BMPs are recommended. The PI is less restrictive than some situations. For example, in Maryland, producers must have a plan to manage P.

Easter asked what this might mean for Washington State. Stevens said once you saturate the soil with P, P moves. In eastern Washington, caliche layers in the more arid areas stops movement of P. It is easier if your dairy is new because you can start managing for P now. Older dairy operations may have high residual P. Bengen noted that P is also a feed/nutrition issue. Stevens agreed, saying that P is imported onto the farm in feed stock.

Easter said Ecology has no P standard for surface water but is working on some kind of list of phosphorus-limited watersheds.



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Existing Structures

Easter described an on-going concern involving existing structures. We need a process to see if the structure meets NRCS standards, or at least determine if it is functioning and doesn't present health or safety risks.

Shavlik added that for new structures added onto older structures, the old part need not meet the current standards.

Larry Johnson said we need to be concerned about performance and safety. A concrete slab is far different than a waste storage pond. As engineers and planners, we would look at documentation. Without documentation, the structure would have to meet the current standard. Unfortunately, we don't have a process to do this at this time.

Colvin said some facilities are home built, and it will be a timely and costly process to evaluate these. Johnson responded that these facilities must meet state water quality standards.

Becker asked how many engineers were employed by NRCS in Washington. Johnson said that they have a good complement of field engineers.

Meyer said NRCS, the Commission and conservation districts need to sit down and provide an answer to the Task Force and the industry. The Commission will put together a work group to develop a process for evaluating older structures.

Becker said producers are subject to fines if deadlines in NOCs are not met. It could be cheaper for a producer to pay the fine than to fix the lagoon. What is their financial risk? KauzLoric responded that RCW 90.64 doesn't specify anything beyond \$5,000 in 2002 and \$5,000 in 2003.

VanBatavia sought confirmation from Johnson that manure is a better sealer than clay or plastic. Johnson responded that NRCS has specialists who can address this question. It depends, in part, on the base soil and pond maintenance practices.

Colvin asked if NRCS is signing off on plans that utilize older structures. Colvin then asked if RCW 90.64 is asking NRCS to approve plans. Bengen noted the Whatcom CD is not approving some plans because of older structures.

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***Other***

DeGroot said the Task Force should send thank you cards to Henry Oord and noted his zip code is 98944.

Bengen expressed disappointment that the Task Force participants representing the environmental community were not present for the tour.

Wallace asked that the King Conservation District be included in the distribution list of meeting minutes.

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***Next meeting and adjournment***

The next meeting will be held in Olympia in the Cherberg Building on September 20.

There being no other business before the Task Force, the meeting was adjourned at 5:10 p.m.

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***Summary of action items***

1. Staff to work on obtaining a Task Force representative from public health departments.
2. Staff to contact a statewide association of oyster growers for a Task Force representative.
3. Staff to request a temporary appointment of a Task Force representative from Mike Tate, Dean of the College of Agriculture and Home Economics, Washington State University.
4. Ecology to report at every meeting on the status of penalties and collections.
5. Ecology to provide a breakdown of penalties and actions by region to the Task Force.
6. Ecology to provide examples of dairy inspection reports for the Task Force.
7. Ecology to provide examples of the three "potential to pollute" categories: minimal potential to pollute; moderate potential; and imminent potential.
8. Conservation Commission to assemble a work group to develop a process for evaluating older structures.
9. Task Force to send a thank you to Henry Oord.
10. King Conservation District to be sent meeting minutes.

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***Summary of motions***

1. M/S by Rasmussen/Meyer to approve the minutes as submitted. Motion carried without dissent.

Respectfully submitted,

Tom Salzer  
Vicki Flynn